

106TH CONGRESS  
2D SESSION

# S. 3066

To amend titles XVIII and XIX of the Social Security Act to require criminal background checks for nursing facility workers.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2000

Mr. ASHCROFT introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend titles XVIII and XIX of the Social Security Act to require criminal background checks for nursing facility workers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Senior Care Safety  
5       Act of 2000”.

6       **SEC. 2. CRIMINAL BACKGROUND CHECKS FOR NURSING**  
7               **FACILITY WORKERS.**

8               (a) MEDICARE.—

9                       (1) REQUIREMENT TO CONDUCT CRIMINAL  
10              BACKGROUND CHECKS.—Section 1819(d)(4) of the

1 Social Security Act (42 U.S.C. 1395i–3(d)(4)) is  
2 amended—

3 (A) by redesignating subparagraph (B) as  
4 subparagraph (C); and

5 (B) by inserting after subparagraph (A)  
6 the following new subparagraph:

7 “(B) SCREENING OF WORKERS.—

8 “(i) IN GENERAL.—A skilled nursing  
9 facility shall not knowingly employ an indi-  
10 vidual unless the individual has passed a  
11 criminal background check conducted in  
12 accordance with the requirements of clause  
13 (ii).

14 “(ii) REQUIREMENTS.—

15 “(I) NOTIFICATION.—Not later  
16 than 180 days after the date of enact-  
17 ment of this subparagraph, the Sec-  
18 retary, in consultation with the Attor-  
19 ney General, shall notify skilled nurs-  
20 ing facilities of the requirements of  
21 this subparagraph.

22 “(II) SKILLED NURSING FACIL-  
23 ITY REQUIREMENTS.—

24 “(aa) PROVISION OF STATE-  
25 MENTS TO APPLICANTS.—Not

1 later than 180 days after a  
 2 skilled nursing facility receives a  
 3 notice in accordance with sub-  
 4 clause (I), the skilled nursing fa-  
 5 cility shall adopt and enforce the  
 6 requirement that each applicant  
 7 for employment at the skilled  
 8 nursing facility shall complete the  
 9 written statement described in  
 10 subclause (III).

11 “(bb) TRANSMITTAL OF  
 12 COMPLETED STATEMENTS.—Not  
 13 later than 5 business days after a  
 14 skilled nursing facility receives  
 15 such completed written state-  
 16 ment, the skilled nursing facility  
 17 shall transmit such statement to  
 18 the Attorney General.

19 “(III) STATEMENT DE-  
 20 SCRIBED.—The written statement de-  
 21 scribed in this subclause shall contain  
 22 the following:

23 “(aa) The name, address,  
 24 and date of birth appearing on a  
 25 valid identification document (as

1 defined section 1028(d)(2) of  
2 title 18, United States Code) of  
3 the applicant, a description of the  
4 identification document used, and  
5 the applicant's social security ac-  
6 count number.

7 “(bb) A statement that the  
8 applicant has never been con-  
9 victed of a crime of violence or of  
10 a Federal or State offense con-  
11 sisting of the distribution of con-  
12 trolled substances (as that term  
13 is defined in section 102(6) of  
14 the Controlled Substances Act  
15 (21 U.S.C. 802(6)).

16 “(cc) The date the state-  
17 ment is made.

18 “(IV) ATTORNEY GENERAL RE-  
19 QUIREMENTS.—

20 “(aa) IN GENERAL.—Upon  
21 receipt of a completed written  
22 statement from a skilled nursing  
23 facility, the Attorney General,  
24 using information available to the  
25 Department of Justice, shall no-

1           tify the facility of the receipt of  
2           such statement and promptly de-  
3           termine whether the applicant  
4           completing the statement has  
5           ever been convicted of a crime  
6           described in subclause (III)(bb).

7           “(bb) NOTIFICATION OF  
8           FAILURE TO PASS.—Not later  
9           than 5 business days after the re-  
10          ceipt of such statement, the At-  
11          torney General shall inform the  
12          skilled nursing facility transmit-  
13          ting the statement if the appli-  
14          cant completing the statement  
15          did not pass the background  
16          check. A skilled nursing facility  
17          not so informed within such pe-  
18          riod shall consider the applicant  
19          completing the statement to have  
20          passed the background check.

21          “(cc) NO FEE.—In no case  
22          shall a skilled nursing facility or  
23          an applicant be charged a fee in  
24          connection with the background

1 check process conducted under  
2 this clause.

3 “(iii) LIMITATION ON USE OF INFOR-  
4 MATION.—A skilled nursing facility that  
5 obtains criminal background information  
6 about an applicant pursuant to this sub-  
7 paragraph may use such information only  
8 for the purpose of determining the suit-  
9 ability of the worker for employment.

10 “(iv) NO ACTION BASED ON FAILURE  
11 TO HIRE.—In any action against a skilled  
12 nursing facility based on a failure or re-  
13 fusal to hire an applicant, the fact that the  
14 applicant did not pass a background check  
15 conducted in accordance with this subpara-  
16 graph shall be a complete defense to such  
17 action.”.

18 (2) PENALTIES.—Section 1819(h)(1) of the So-  
19 cial Security Act (42 U.S.C. 1395i–3(h)(1)) is  
20 amended—

21 (A) by striking the heading and inserting  
22 “STATE AUTHORITY”;

23 (B) in the first sentence—

1 (i) by redesignating subparagraphs  
 2 (A) and (B) as clauses (i) and (ii) and in-  
 3 denting such clauses appropriately; and

4 (ii) by striking “If a State” and in-  
 5 serting the following:

6 “(A) IN GENERAL.—If a State”;

7 (C) in the second sentence, by striking “If  
 8 a State” and inserting the following:

9 “(C) PENALTIES FOR PRIOR FAILURES.—  
 10 If a State”; and

11 (D) by inserting after subparagraph (A)  
 12 (as added by subparagraph (B)(ii) of this para-  
 13 graph) the following new subparagraph:

14 “(B) REQUIRED PENALTIES.—A civil  
 15 money penalty of not more than \$5000 shall be  
 16 assessed and collected, with interest, against  
 17 any facility which is or was out of compliance  
 18 with the requirements of clause (i), (ii)(II), or  
 19 (iii) of subsection (d)(4)(B).”.

20 (b) MEDICAID.—

21 (1) REQUIREMENT TO CONDUCT CRIMINAL  
 22 BACKGROUND CHECKS.—Section 1919(d)(4) of the  
 23 Social Security Act (42 U.S.C. 1396r(d)(4)) is  
 24 amended—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following new subparagraph:

“(B) SCREENING OF WORKERS.—

“(i) IN GENERAL.—A nursing facility shall not knowingly employ an individual unless the individual has passed a criminal background check conducted in accordance with the requirements of clause (ii).

“(ii) REQUIREMENTS.—

“(I) NOTIFICATION.—Not later than 180 days after the date of enactment of this subparagraph, the Secretary, in consultation with the Attorney General, shall notify nursing facilities of the requirements of this subparagraph.

“(II) NURSING FACILITY REQUIREMENTS.—

“(aa) PROVISION OF STATEMENTS TO APPLICANTS.—Not later than 180 days after a nursing facility receives a notice in accordance with subclause (I),

1 the nursing facility shall adopt  
2 and enforce the requirement that  
3 each applicant for employment at  
4 the nursing facility shall complete  
5 the written statement described  
6 in subclause (III).

7 “(bb) TRANSMITTAL OF  
8 COMPLETED STATEMENTS.—Not  
9 later than 5 business days after a  
10 nursing facility receives such  
11 completed written statement, the  
12 nursing facility shall transmit  
13 such statement to the Attorney  
14 General.

15 “(III) STATEMENT DE-  
16 SCRIBED.—The written statement de-  
17 scribed in this subclause shall contain  
18 the following:

19 “(aa) The name, address,  
20 and date of birth appearing on a  
21 valid identification document (as  
22 defined section 1028(d)(2) of  
23 title 18, United States Code) of  
24 the applicant, a description of the  
25 identification document used, and

1 the applicant's social security ac-  
2 count number.

3 “(bb) A statement that the  
4 applicant has never been con-  
5 victed of a crime of violence or of  
6 a Federal or State offense con-  
7 sisting of the distribution of con-  
8 trolled substances (as that term  
9 is defined in section 102(6) of  
10 the Controlled Substances Act  
11 (21 U.S.C. 802(6)).

12 “(cc) The date the state-  
13 ment is made.

14 “(IV) ATTORNEY GENERAL RE-  
15 QUIREMENTS.—

16 “(aa) IN GENERAL.—Upon  
17 receipt of a completed written  
18 statement from a nursing facility,  
19 the Attorney General, using in-  
20 formation available to the De-  
21 partment of Justice, shall notify  
22 the facility of the receipt of such  
23 statement and promptly deter-  
24 mine whether the applicant com-  
25 pleting the statement has ever

1           been convicted of a crime de-  
2           scribed in subclause (III)(bb).

3           “(bb) NOTIFICATION OF  
4           FAILURE TO PASS.—Not later  
5           than 5 business days after the re-  
6           ceipt of such statement, the At-  
7           torney General shall inform the  
8           nursing facility transmitting the  
9           statement if the applicant com-  
10          pleting the statement did not  
11          pass the background check. A  
12          nursing facility not so informed  
13          within such period shall consider  
14          the applicant completing the  
15          statement to have passed the  
16          background check.

17          “(cc) NO FEE.—In no case  
18          shall a nursing facility or an ap-  
19          plicant be charged a fee in con-  
20          nection with the background  
21          check process conducted under  
22          this clause.

23          “(iii) LIMITATION ON USE OF INFOR-  
24          MATION.—A nursing facility that obtains  
25          criminal background information about an

1 applicant pursuant to this subparagraph  
 2 may use such information only for the pur-  
 3 pose of determining the suitability of the  
 4 worker for employment.

5 “(iv) NO ACTION BASED ON FAILURE  
 6 TO HIRE.—In any action against a nursing  
 7 facility based on a failure or refusal to hire  
 8 an applicant, the fact that the applicant  
 9 did not pass a background check conducted  
 10 in accordance with this subparagraph shall  
 11 be a complete defense to such action.”.

12 (2) PENALTIES.—Section 1919(h)(2)(A) of the  
 13 Social Security Act (42 U.S.C. 1396r(h)(2)(A)) is  
 14 amended by inserting after clause (iv) the following  
 15 new clause:

16 “(v) A civil money penalty of not  
 17 more than \$5000 shall be assessed and col-  
 18 lected, with interest, against any facility  
 19 which is or was out of compliance with the  
 20 requirements of clause (i), (ii)(II), or (iii)  
 21 of subsection (d)(4)(B).”.

22 (c) EFFECTIVE DATE.—The amendments made by  
 23 this section take effect on October 1, 2000.

1 **SEC. 3. REPORT ON CRIMINAL BACKGROUND CHECKS.**

2 (a) IN GENERAL.—Not later than 3 years after the  
3 date of enactment of this Act, the Attorney General shall  
4 conduct a study of the effects of background checks in  
5 nursing facilities and submit a report to Congress that in-  
6 cludes the following:

7 (1) The success of conducting background  
8 checks on nursing facility employees.

9 (2) The impact of background checks on patient  
10 care in such facilities.

11 (3) The need to conduct background checks in  
12 other patient care settings outside of nursing facili-  
13 ties.

14 (4) Suggested methods for further improving  
15 the background check system and the estimated  
16 costs of such improvements.

17 (b) DEFINITION OF NURSING FACILITY.—In sub-  
18 section (a), the term “nursing facility” has the meaning  
19 given that term in section 1919(a) of the Social Security  
20 Act (42 U.S.C. 1396r(a)) and includes a skilled nursing  
21 facility (as defined in section 1819(a) of such Act (42  
22 U.S.C. 1395i–3(a))).

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